

1 ORRICK, HERRINGTON & SUTCLIFFE LLP  
2 KAREN G. JOHNSON-MCKEYAN (SBN 121570)  
3 kjohnson-mckewan@orrick.com  
4 ANNETTE L. HURST (SBN 148738)  
5 ahurst@orrick.com  
6 GABRIEL M. RAMSEY (SBN 209218)  
7 gramsey@orrick.com  
8 405 Howard Street, San Francisco, CA 94105  
9 Tel: 1.415.773.5700 / Fax: 1.415.773.5759  
10 PETER A. BICKS (*pro hac vice*)  
11 pbicks@orrick.com  
12 LISA T. SIMPSON (*pro hac vice*)  
13 lsimpson@orrick.com  
14 51 West 52<sup>nd</sup> Street, New York, NY 10019  
15 Tel: 1.212.506.5000 / Fax: 1.212.506.5151

9 BOIES, SCHILLER & FLEXNER LLP  
10 DAVID BOIES (*pro hac vice*)  
11 dboies@bsfllp.com  
12 333 Main Street, Armonk, NY 10504  
13 Tel: 1.914.749.8200 / Fax: 1.914.749.8300  
14 STEVEN C. HOLTZMAN (SBN 144177)  
15 sholtzman@bsfllp.com  
16 1999 Harrison St., Ste. 900, Oakland, CA 94612  
17 Tel: 1.510.874.1000 / Fax: 1.510.874.1460

14 ORACLE CORPORATION  
15 DORIAN DALEY (SBN 129049)  
16 dorian.daley@oracle.com  
17 DEBORAH K. MILLER (SBN 95527)  
18 deborah.miller@oracle.com  
19 MATTHEW M. SARBORARIA (SBN 211600)  
20 matthew.sarboraria@oracle.com  
21 RUCHIKA AGRAWAL (SBN 246058)  
22 ruchika.agrawal@oracle.com  
23 500 Oracle Parkway,  
24 Redwood City, CA 94065  
25 Tel: 650.506.5200 / Fax: 650.506.7117

20 *Attorneys for Plaintiff*  
21 ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.  
25 Plaintiff,  
26 v.  
27 GOOGLE INC.  
28 Defendant.

Case No. CV 10-03561 WHA

**[PROPOSED] ORDER GRANTING  
ORACLE'S MOTION IN LIMINE #7  
REGARDING REPLY REPORT OF  
GOOGLE'S DAMAGES EXPERT, DR.  
GREGORY LEONARD**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William H. Alsup

[PROPOSED] ORDER GRANTING ORACLE'S  
MOTION IN LIMINE #7 RE:  
REPLY REPORT OF DR. LEONARD

1 This Court has read and considered Plaintiff Oracle America, Inc.'s Motion in Limine #7  
2 Regarding the Reply Expert Report of Google's Damages Expert Dr. Gregory Leonard, and any  
3 Opposition thereto and Reply in support thereof, and any and all additional supporting papers.

4 Based thereon [and on statements made by counsel at the hearing on the Motion], IT IS  
5 HEREBY ORDERED THAT Oracle's Motion is GRANTED.

6 Portions of Dr. Leonard's analysis, opinions, and conclusions are stricken and his  
7 testimony on those matters excluded under Federal Rule of Civil Procedure 37 because they are  
8 based on new evidence and analysis disclosed for the first time in his Reply Report, yet are used  
9 to support opinions on expense deductions and apportionment on which Google bears the burden  
10 of proof.

11 Specifically, Dr. Leonard's analysis, opinions, conclusions, and testimony regarding  
12 previously undisclosed conversations with Mr. Gold are excluded in their entirety because Dr.  
13 Leonard failed to disclose this information in his opening report. Dr. Leonard uses this  
14 information to support Google's expense deductions, which Google bears the burden of proving.

15 Dr. Leonard's sensitivity analysis set forth in paragraphs 24-28 and Exhibits 1a-1d to his  
16 Reply Report are excluded because Dr. Leonard failed to include this analysis in his opening  
17 report. Dr. Leonard uses this information to support his apportionment analysis on which Google  
18 also bears the burden of proof.

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20 IT IS SO ORDERED.

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THE HONORABLE WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE  
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